

1 **WAGANAKISING ODAWAK STATUTE**
2 **DOMESTIC VIOLENCE**

3
4 **SECTION I. SHORT TITLE**
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6 This statute may be cited as the “Domestic Violence Statute.”
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9 **SECTION II. PURPOSE**
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11 The Little Traverse Bay Bands of Odawa Indians (LTBB) Waganakising Odawak Statute,
12 Domestic Violence is construed to promote the following:
13

14 That violence against family members and those in close or dating relationships is not
15 acceptable. It is the expectation that the criminal justice system respond to victims of domestic
16 violence with fairness, respect, compassion, and in a prompt and effective manner. The goal of
17 this Statute is to provide victims of domestic violence with safety and protection.
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20 **SECTION III. DEFINITIONS**
21

22 **A. “Clerk”** means the clerk of the Tribal Court.
23

24 **B. “Dating Relationship”** means frequent, intimate associations primarily characterized by
25 the expectation of affectionate or sexual involvement.
26

27 **C. “Indian”** means a person who is a member of a federally recognized Indian Tribe.
28

29 **D. “Indian Tribe”** means any federally recognized Indian Tribe.
30

31 **E. “LTBB or Tribe”** means the Little Traverse Bay Bands of Odawa Indians.
32

33 **F. “Non-Indian”** means any person who is not a member of a federally recognized Indian
34 Tribe.

1
2 **G. “Perpetrator”** means the person who allegedly committed an act of domestic violence.

3
4 **H. “Protection Order”** means:

5
6 **1.** any injunction, restraining order, or other order issued by a civil or criminal court
7 for the purpose of preventing violent or threatening acts or harassment against, sexual
8 violence against, contact or communication with, or physical proximity to, another
9 person; and

10
11 **2.** any temporary or final order issued by a civil or criminal court, whether obtained
12 by filing an independent action or as a pendent lite order in another proceeding, if the
13 civil or criminal order was issued in response to a complaint, petition, or motion filed by
14 or on behalf of a person seeking protection.

15
16 **I. “Territorial Jurisdiction of the Little Traverse Bay Bands of Odawa Indians”** means
17 *“areas referred to in Public Law 103-324, 25 U.S.C. Section 1300k-2(b)(2)(A) as the boundaries*
18 *of the reservations for the Little Traverse Bay Bands as set out in Article I, paragraphs ‘third*
19 *and fourth’ of the Treaty of 1855, 11 Stat. 621.”* Little Traverse Bay Bands Constitution, Article
20 V(A)(1)(a).

21
22 **J. “Tribal Court”** means the Little Traverse Bay Bands of Odawa Indians Tribal Court.

23
24 **K. “Tribal Citizen”** means a person who is an enrolled citizen of the Little Traverse Bay
25 Bands of Odawa Indians.

26
27 **L. “Tribal Judge or Judge”** means a judge for the Little Traverse Bay Bands of Odawa
28 Indians.

29
30 **SECTION IV. JURISDICTION**

31
32 **A. General Criminal Jurisdiction.** Criminal jurisdiction of the Tribe extends to adult
33 LTBB citizens and adult citizens of Federally Recognized Tribes; however, upon motion of the
34 Tribal Prosecutor the Judge has the discretion to try a minor as an adult.

1
2 **1.** The Indian Civil Rights Act (ICRA), 25 U.S.C. Section 1302, was enacted by
3 Congress in 1968. Under ICRA, the Tribe's jurisdiction is limited to punishments that
4 may impose up to a one-year jail term and a fine up to \$5,000.00.

5
6 **2.** The Tribal Law and Order Act of 2010 (TLOA), Public Law. 111-211, was
7 amended by Congress in 2013. Upon a resolution by Tribal Council adopting TLOA, the
8 Tribe's jurisdiction is limited to punishments that may impose up to a three-year jail term
9 and a fine up to \$15,000.00.

10
11 **B. Special Domestic Violence Criminal Jurisdiction.** The Violence Against Women
12 Reauthorization Act of 2013 (VAWA), S.47, 113th Congress, 2013-2015, was reauthorized and
13 amended by Congress in 2013. Under VAWA LTBB has limited criminal jurisdiction over non-
14 Indian defendants only for the following crimes: dating violence, domestic violence, violations
15 of protection orders, and other crimes when committed in the context of a dating or domestic
16 relationship. The limited jurisdiction applies where the victim is an Indian, the defendant lives or
17 works in the territorial jurisdiction of LTBB, or the defendant's spouse, intimate partner, or
18 dating partner is an Indian. Such special jurisdiction may only be exercised when the defendant
19 is charged with one of the crimes in this Statute.

20
21 **C. Civil Jurisdiction.** The Tribal Court has full jurisdiction and authority to issue and
22 enforce protection orders against all persons who are Indians; live or work in the territorial
23 jurisdiction of LTBB; or are a spouse, intimate partner or dating partner of an Indian regarding
24 matters arising within the territorial jurisdiction of LTBB as set out in VAWA, Title IX, Section
25 905.

26 27 28 **SECTION V. DUE PROCESS GUARANTEES**

29
30 **A. Rights of the Accused.** In all criminal prosecutions, the accused has the following rights:

31
32 **1.** to defend himself or herself in person, at his own expense, or have a court-
33 appointed lawyer;

2. to demand the nature and cause of the accusation against him face to face;
3. to have compulsory process served for obtaining witnesses in his behalf;
4. to a speedy public trial by an impartial jury;
5. to be timely notified of his rights and responsibilities;
6. to be notified of his right to file a petition for a writ of *habeas corpus* in a court of the United States;
7. the Tribal Court ensures that all other rights whose protection is necessary under the Constitution of the United States in order for Congress to recognize and affirm the inherent power of LTBB to exercise special domestic violence criminal jurisdiction over the defendant;
8. the Tribal Court ensures that all applicable rights under the special domestic violence criminal jurisdiction provisions are provided; and
9. that LTBB's criminal laws, rules of evidence, and rules of criminal procedure are publicly available prior to charging the defendant.

B. Courts of Record.

1. Tribal Courts are the Courts of Record and the Clerk must certify under seal as to the accuracy and validity of the files and records of all proceedings before the LTBB Courts.
2. The Clerk must take, preserve and certify under seal to the accuracy of a verbatim record of the proceedings before the Courts. The record may be created and recorded by a stenographic, electronic, mechanical, or other recording devices approved by the Chief Judge of the Court as a trustworthy means of creating a permanent verbatim record of all proceedings.

1 **3.** The Chief Judge must proscribe the length of time verbatim transcripts must be
2 preserved by the Clerk.

3
4 **4.** It is a criminal offense, punishable by penalties and under the laws of LTBB for
5 the Clerk of the Tribal Courts to knowingly make or keep a false file, record or certificate
6 or to alter, amend or destroy any file, record or transcript without lawful authority.
7
8

9 **SECTION VI. VAWA REQUIREMENTS**
10

11 **A. Right to Counsel.** When a non-Indian defendant is charged with a crime of domestic
12 violence, the defendant has the right to receive a court-appointed lawyer. Upon order of the
13 court, the lawyer must defend, advise, and counsel without expense to the defendant, any person
14 who is subject to special domestic violence criminal jurisdiction.
15

16 1. All court-appointed lawyers must be admitted to practice law before any State
17 Supreme Court or U.S. District Court and must be in good standing.
18

19 2. All court-appointed lawyers must keep a record of all services rendered by the
20 lawyer in that capacity and file the report with the Tribal Council.
21

22 3. By December 1 of each year, file with the Chief Judge and Tribal Council an
23 annual report on the average cost of defending offenses under this Statute.
24

25 4. A court-appointed lawyer may petition the court to withdraw as lawyer of record
26 and the court may grant that petition whenever private counsel is employed either by the
27 defendant or by any other person to represent that defendant accepts the counsel.
28

29 **B. Tribal Court Judges.** All judges presiding over cases in which special domestic violence
30 criminal jurisdiction is asserted, must be admitted to practice before the Supreme Court of the
31 United States, or any United States Circuit Court of Appeals, or the Supreme Court of any state;
32 and have sufficient legal training to preside over criminal trials.
33

1 **C. Formation of Jury.** Where the defendant is charged with a crime under this Statute, the
2 defendant has a right to be tried by a jury that represents a fair cross section of the community.
3

4 **1. Juror Qualifications.** The basic qualifications of a juror are any person who:
5

6 **a.** who is at least 18 years of age;
7

8 **b.** is not under any legal disability;
9

10 **c.** who has not been convicted of a felony in any jurisdiction; and
11

12 **d.** who is an enrolled member of LTBB and lives within the territorial
13 jurisdiction of LTBB; is a family member of an enrolled member of LTBB and
14 lives within the territorial jurisdiction of LTBB; or is person employed by LTBB
15 or any of its entities.
16

17 **2. Jury Selection Process.** LTBB ensures that juries represent a fair cross section of
18 the community and do not systematically exclude any distinctive group in the
19 community, including non-Indians. Except as otherwise provided above in
20 Section V(C)(1), the Tribal Court will follow all procedures as provided in
21 Chapter 8 of the LTBB Court Rules.
22

23 **D. Imprisonment.** Any defendant sentenced to greater than one year imprisonment, must
24 serve the sentence in a tribal facility that is approved by the Bureau of Indian Affairs.
25 [This subsection is ONLY needed if LTBB is going to open its own prison]
26
27

28 **SECTION VII. CRIMES OF DOMESTIC VIOLENCE** 29

30 **A. Dating Violence.** This crime occurs when violence is committed by a person who is or
31 has been in a social relationship of a romantic or intimate nature with the victim, as determined
32 by the length of the relationship, the type of relationship, and the frequency of interaction
33 between the persons involved in the relationship.
34

1 **B. Domestic Violence.** This crime occurs when violence is committed by a former spouse or
2 intimate partner of the victim, by a person with whom the intimate partner of the victim, by a
3 person with whom the victim shares a child in common, by a person who is cohabitating with or
4 has cohabitated with the victim as a spouse or intimate partner, or by a person similarly situated
5 to a spouse of the victim under the domestic- or family- violence laws of LTBB when the
6 violence occurs within the territorial jurisdiction of LTBB.

7
8 **C. Violation of Protection Order.** This crime occurs when the defendant acts within the
9 territorial jurisdiction of LTBB and violates the portion of a protection order that:

- 10
11 1. prohibits or provides protection against violent or threatening acts or harassment
12 against, sexual violence against, contact or communication with, or physical proximity to,
13 another person;
14
15 2. was issued against the defendant;
16
17 3. is enforceable by the participating tribe; and
18
19 4. is consistent with 18 U.S.C. § 2265(b).
20

21 **D. Other Domestic Violence Crimes.** A perpetrator is guilty of a crime of domestic
22 violence if the person commits any of the following against that person's spouse, former spouse,
23 another person to whom the perpetrator is related to by blood or marriage, another person with
24 whom the perpetrator is or was actually residing, another person with whom the perpetrator had
25 or is having a dating relationship, another person with whom the perpetrator has a child in
26 common, the minor child of any of the preceding persons, the perpetrator's minor child, or
27 another person who has been appointed the custodian or legal guardian for the person's minor
28 child.
29

- 30 1. **Assault.** See WOTCL 9.107 (C)(1) and (2) (XII(A) and (B))
31
32 2. **Battery.** See WOTCL 9.107 (C)(3) (XII(C)(D))
33

1 **3. Compelling an Act.** Compelling the other person by force or threat of force to
2 perform an act from which the other person has the right to refrain or to refrain from an
3 act the other person has the right to perform.
4

5 **4. Sexual Assault.** See Sex Offense Statute WOTCL 9.210(A) – (H)
6

7 **5. Homicide Crimes.** See X(A)-(E) and XI(A)-(E).
8

9 **6. Other Conduct.** A knowing, purposeful, or reckless course of conduct intended
10 to harass the other person, including but not limited to the following:
11

12 **a. Stalking.** See XII(E) and (F)
13

14 **b. Harassment.** See WOTCL 9.107(C)(8)
15

16 **c. Arson.** See WOTCL 9.107(F)(2) (XV(A))
17

18 **d. Trespassing.** See WOTCL 9.107(J)(4) (XVII(D))
19

20 **e. Larceny.** See WOTCL 9.107(E)(1) (XVIII(A))
21

22 **f. Destruction of Property.** See WOTCL 9.107(J)(1) (XVII(C))
23

24 **g. Carrying a Concealed Weapon without a Permit.** See WOTCL
25 9.107(D)(1) and (2) (XIV(A) and (B))
26

27 **h. Injuring an Animal.** See WOTCL 9.107(Q)(4) (XXIX(I))
28

29 **i. False Imprisonment.** See WOTCL 9.107(C)(7) (XIII(B))
30

31 **7. Interstate Travel to Commit Domestic Violence.** See 18 U.S.C. § 2261.
32

33 **8. Interstate Stalking.** See 18 U.S.C. § 2261A
34

1 **9. Interstate Travel to Violate an Order of Protection.** See 18 U.S.C. § 2262.

2
3 **10. Possession of Firearm while Subject to Order of Protection.** See 18 U.S.C. §
4 922(g)(8).

5
6 **11. Possession of Firearm after Conviction of Misdemeanor Crime of Domestic**
7 **Violence.** See 18 U.S.C. § 922(g)(9).

8
9
10 **SECTION VIII. PENALTIES**

11
12 **A. First Offense.** A perpetrator who is found guilty of a crime under this Statute is subject
13 to imprisonment of up to one year, a fine of up to \$5,000.00, and any appropriate rehabilitative
14 or probationary terms.

15
16 **B. Second Offense.** A perpetrator who is found guilty of a crime under this Statute and the
17 crime is the perpetrator's second offense, is subject to imprisonment of up to two years, a fine of
18 up to \$10,000.00, and any appropriate rehabilitative or probationary terms.

19
20 **C. Third or Subsequent Offense.** A perpetrator who is found guilty of a crime under this
21 Statute and the crime is the perpetrator's third offense, is subject to imprisonment of up to three
22 years, a fine of up to \$15,000.00, and any appropriate rehabilitative or probationary terms.

23
24 **D. Aggravating Circumstances.** Where there are aggravating circumstances, the Judge may
25 increase a sentence above the proscribed range. Aggravating circumstances include, but are not
26 limited to, the following:

27
28 **1.** where the victim suffers serious bodily injury from the attack;

29
30 **2.** where the perpetrator is a repeat offender;

31
32 **3.** where the perpetrator used a dangerous weapon or used an object as a dangerous
33 weapon during the attack;

- 1 **4.** where the perpetrator was under the influence of drugs or alcohol;
2
3 **5.** where the attack took place in the presence of minor children;
4
5 **6.** where the perpetrator knew or should have known that the victim was particularly
6 vulnerable or incapable of resistance; or
7
8 **7.** where the victim was pregnant and the perpetrator knew of the pregnancy.
9

10 **E.** The Court must order the perpetrator to pay restitution for any medical expenses and any
11 property damage.
12

13 **F.** When making sentencing determinations, the Court must consider the type and
14 seriousness of the crime, including any aggravating circumstances, as well as the potential
15 helpfulness of rehabilitative services.
16
17

18 **SECTION IX. SAVINGS CLAUSE**

19

20 In the event that any phrase, provision, part, paragraph, subsection or section of this
21 statute is found by a court of competent jurisdiction to violate the Constitution, laws or
22 ordinances of the Little Traverse Bay Bands of Odawa Indians, such phrase, provision, part,
23 paragraph, subsection or section shall be considered to stand alone and to be deleted from this
24 statute, the entirety of the balance of the statute to remain in full and binding force and effect.
25

26 **SECTION X. EFFECTIVE DATE**

27

28 Effective March 7, 2015, and upon the signature of the Executive or shall be deemed
29 enacted if not expressly vetoed by the Executive within thirty (30) days of submission. The
30 Tribal Council may, by an affirmative vote of seven (7) members of the Tribal Council, override
31 a veto by the Executive.
32
33

CERTIFICATION